



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0209; FRL-9952-74-Region 4]

Air Plan Approval; Alabama and North Carolina;

Interstate Transport – 2010 NO₂ Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the North Carolina SIP, submitted by the North Carolina Department of Environmental Quality (NC DEQ) on March 24, 2016, and the portions of a revision to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on December 9, 2015, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is approving North Carolina’s March 24, 2016, SIP submission and the portions of Alabama’s December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO₂ NAAQS.

DATES: This rule is effective on [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for these actions under Docket Identification No

EPA-R04-OAR-2016-0209. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). EPA sometimes refers to these two prongs conjointly as the “good neighbor” provision of the CAA. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to

include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In a notice of proposed rulemaking (NPRM) published on August 1, 2016 (81 FR 50409), EPA proposed to approve North Carolina's March 24, 2016, SIP submission and the portions of Alabama's December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO₂ NAAQS. The NPRM provides additional detail regarding the rationale for EPA's actions, including further discussion of the requirements for prongs 1 and 2. Comments on the proposed rulemaking were due on or before August 31, 2016. EPA received no adverse comments on the proposed actions. All other applicable infrastructure SIP requirements for Alabama and North Carolina for the 2010 1-hour NO₂ NAAQS have been or will be addressed in separate rulemakings.

II. Final Actions

As described previously, EPA is approving North Carolina's March 24, 2016, SIP revision and the portions of Alabama's December 9, 2015, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO₂ NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2016.

V. Anne Heard

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50(e) is amended by adding a new entry for “110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 NO₂ NAAQS - Update” at the end of the table to read as follows:

§ 52.50 Identification of plan.

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(e) * * *

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS - Update	Alabama	12/9/2015	[Insert date of publication in <u>Federal Register</u>], [Insert Federal Register citation]	Addressing Prongs 1 and 2 of Section 110(a)(2)(D)(i)(I) only

Subpart II—North Carolina

3. Section 52.1770(e) is amended by adding a new entry “Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I)) for the 2010 1-hour NO₂ NAAQS” at the end of the table to read as follows:

§ 52.1770 Identification of plan.

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(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I)) for the 2010 1-hour NO2 NAAQS	3/24/2016	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	

[FR Doc. 2016-22760 Filed: 9/21/2016 8:45 am; Publication Date: 9/22/2016]